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09/237,194

01/26/1999

STEPHEN JAMES BROWN

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HEALTH HERO NETWORK, INC.
2400 GENG ROAD, SUITE 200
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EXAMINER

MORGAN, ROBERT W

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

1 UNITED STATES PATENT AND TRADEMARK OFFICE

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4 BEFORE THE BOARD OF PATENT APPEALS
5 AND INTERFERENCES
6

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8 *Ex parte* STEPHEN JAMES BROWN
9

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11 Appeal 2009-002452
12 Application 09/237,194
13 Technology Center 3600
14

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16 Decided: April 20, 2010
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19 Before HUBERT C. LORIN, ANTON W. FETTING, and
20 BIBHU R. MOHANTY, *Administrative Patent Judges*.
21 FETTING, *Administrative Patent Judge*.

22 DECISION ON APPEAL

1 STATEMENT OF THE CASE

2 Stephen James Brown (Appellant) seeks review under 35 U.S.C. § 134
3 (2002) of a final rejection of claims 34-138, the only claims pending in the
4 application on appeal.

5 We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b)
6 (2002).

7 SUMMARY OF DECISION¹

8 We AFFIRM.

9 THE INVENTION

10 The Appellant invented a self-care health monitoring arrangement that
11 gathers data important to a health management program (Specification
12 1:Field of the Invention).

13 An understanding of the invention can be derived from a reading of
14 exemplary claim 34, which is reproduced below [bracketed matter and some
15 paragraphing added].

16 34. A networked health-monitoring system, comprising:

17 (a) a plurality of remote patient sites, each site including

18 (i) at least one display;

19 (ii) a data management unit configured to facilitate
20 collection of patient health-related data;

¹ Our decision will make reference to the Appellant's Appeal Brief ("App. Br.," filed March 31, 2008) and Reply Brief ("Reply Br.," filed September 4, 2008), and the Examiner's Answer ("Ans.," mailed July 7, 2008).

- 1 (iii) a memory; and
2 (iv) stored program instructions for use in generating
3 health-monitoring related information on the display;
4 (b) at least one remotely located computing facility including at
5 least one central server connectable for communication with the
6 data management units at the patient sites,
7 the central server configured to receive and store the
8 patient health-related data from the data management unit
9 at the remote patient sites; and
10 (c) at least one health care professional computer remotely
11 located from and configured for signal communication with the
12 central server,
13 wherein the central server can generate a report based on
14 the patient health-related data collected at the remote
15 patient site and the report can be viewed at the at least
16 one healthcare professional computer and
17 wherein at least one message can be sent from the
18 healthcare professional computer to the remote patient
19 sites through the central server.

20 THE REJECTIONS

21 The Examiner relies upon the following prior art:

Fu	US 4,803,625	Feb. 7, 1989
Lee	US 4,838,275	Jun. 13, 1989
Kirk	US 5,390,238	Feb. 14, 1995
Beckers	US 5,019,974	May 28, 1991
Fujimoto	US 5,339,821	Aug. 23, 1994

22 Claims 34-41, 45-50, 52, 54-59, 61-63, 65, 66, 69-75, 77-84, 88-93, 95,
23 97-102, 104-106, 108, 109, and 112-118 stand rejected under 35 U.S.C.
24 § 103(a) as unpatentable over Fu, Lee, and Kirk.

Claims 42, 44, 85, and 87 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Fu, Lee, Kirk, and Beckers.

Claims 51, 53, 60, 64, 67 94, 96, 103, 107, 110, and 111 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Fu, Lee, Kirk, and Fujimoto.

Claims 43 and 86 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Fu, Lee, Kirk, and Official Notice.

Claims 76 and 119-138 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Fu, Lee, Kirk, and Official Notice.

ARGUMENTS

The Appellant argues the claims rejected under 35 U.S.C. § 103(a) as unpatentable over Fu, Lee, and Kirk as a group. Accordingly, we select claim 34 as representative of the group. 37 C.F.R. § 41.37(c)(1)(vii) (2008).

The Appellant contends that he invented the claimed subject matter prior to the filing date of Kirk and therefore the Kirk reference is not prior art.

ISSUES

The issue of whether the Appellant has sustained its burden of showing that the Examiner erred in rejecting claims 34-138 under 35 U.S.C. § 103(a) as unpatentable over Fu, Lee, Kirk, and the remaining art turns on whether the Appellant adequately swore behind Kirk as prior art.

FACTS PERTINENT TO THE ISSUES

The following enumerated Findings of Fact (FF) are believed to be supported by a preponderance of the evidence.

Facts Related to the Prior Art

Kirk

01. The filing date of Kirk is June 15, 1992.

Facts Related To the Appellant's Declaration Under 37 C.F.R. § 1.131

02. There are two declarations in the evidence appendix. One is dated September 19, 2006. Attached to it are Exhibits labeled A through AB.

03. The declaration states that exhibit B is the evidence of conception. Declaration ¶ 8.

04. Exhibit B is a one page letter dated March 2, 1992, from Steve Brown of Raya Systems to Drs. Jersch and Keiser indicating acceptance of an order for Camit 2.5 indicating a desire to begin development on April 26. There are no details of any method or machine other than the names of some devices. There are no details showing the specific components recited in the claims.

05. The declaration states that exhibits C to AB are the evidence of diligence. Declaration ¶ 10.

06. Exhibit C is a query to the Director of a diabetes research program as to the propriety of applying for funding. The query indicates that commercial development is anticipated. A copy of a Department of Health and Human Services Small Business

1 Innovation Research Programs grant application is appended. No
2 specific details of development of the claimed subject matter are
3 provided.

4 07. Exhibit D is a project plan for KinderCamit. The plan includes
5 a preliminary design document that portrays screen shots, but
6 provides little specification as to the underlying functionality and
7 does not specify how the claimed subject matter is to be
8 implemented at the level of detail in the claims. No specific
9 details of development activities of the claimed subject matter are
10 provided.

11 08. Exhibit E is a draft letter proposing to initiate intellectual
12 property protection measures from an attorney. No specific
13 details of development activities of the claimed subject matter are
14 provided.

15 09. Exhibit F is an invoice from an attorney and a check in payment
16 thereof. Numerous activities are listed, none of which pertain to
17 drafting a patent application. All dates are prior to Kirk's filing
18 date. No specific details of development activities of the claimed
19 subject matter are provided.

20 10. Exhibit G is a letter laying out a proposed development
21 timetable for Camit S 2.5. Declaration ¶ 19 states that this
22 corresponds to the provider interface. The phrase "provider
23 interface" occurs in none of the claims. Numerous proposed
24 generic activities are listed, none of which pertain to specific

claim limitations. No specific details of development activities of the claimed subject matter are provided.

11. Exhibit H is a speaker release form and a letter from the American Diabetes Association acknowledging Mr. Brown's participation in the association's 52nd Scientific Sessions. No specific details of development activities of the claimed subject matter are provided.

12. Exhibit I is an invoice from an attorney and a check in payment thereof. Numerous activities are listed, none of which pertain to drafting a patent application. All dates are prior to Kirk's filing date. No specific details of development activities of the claimed subject matter are provided.

13. Exhibit J is a letter describing personnel assignment and hiring decisions. Declaration ¶ 22 states that this includes a development status report. No discernable description of the invention's development status is present except for a statement as to the need to start on Camit 2.5 and Diabcare documentation. The letter provides no translation from these names to the specific claim limitations. Therefore, how this letter relates to the need for documentation as to the claimed subject matter is not provided. No specific details of development activities of the claimed subject matter are provided.

14. Exhibit K is a one page bullet list of introductions, Raya Systems status, organization, and administrative issues. Declaration ¶ 23 states that this was a meeting agenda that listed

1 the Nintendo project related to the patient interface portion of the
2 invention. Nothing in the agenda provides any details as to what
3 was to be actually discussed. The phrase “patient interface”
4 occurs in none of the claims. No specific details of development
5 activities of the claimed subject matter are provided. The agenda
6 is dated prior to Kirk’s filing date.

7 15. Exhibit L is a work for hire agreement draft. Declaration ¶ 24
8 states that this was for hiring Jay Clark for development of
9 interactive patient self-care education software. No specific
10 details of development activities of the claimed subject matter are
11 provided. The cover sheet is dated prior to Kirk’s filing date.

12 16. Exhibit M is a letter from Sculptured Software indicating a
13 desire to work with Raya Systems. Declaration ¶ 25 states that
14 this was for hiring a software developer for development of
15 interactive patient self-care education software. No specific
16 details of development activities of the claimed subject matter are
17 provided. The letter is dated prior to Kirk’s filing date.

18 17. Exhibit N is a letter to Boehringer Mannheim GmbH indicating
19 a planning timetable that has been used and relating administrative
20 problems affecting development. Declaration ¶ 26 states that this
21 was a status report. The only status related in the letter is an
22 expressed “hope to continue on this schedule” and a general
23 statement that “experienced staff” have been added and the lack of
24 decision making authority. No specific details of development
25 activities of the claimed subject matter are provided. The letter is

1 the first exhibit dated subsequent to Kirk's filing date, being one
2 day later.

3 18. Exhibit O is a letter to Dr. Klaus Piwernetz recapping a
4 conversation and indicating that a dBase contractor was hired and
5 that a conversion program had been provided and a desire to
6 obtain certain information. Declaration ¶ 27 states that this was
7 related to the database portion of the invention. No specific
8 details of development activities of the claimed subject matter are
9 provided. The letter is dated subsequent to Kirk's filing date,
10 being three days later.

11 19. Exhibit P is an invoice from an attorney and a check in payment
12 thereof. Numerous activities are listed, none of which pertain to
13 drafting a patent application. All dates are prior to Kirk's filing
14 date, except for activities relating to contract review and
15 confidentiality agreements. No specific details of development
16 activities of the claimed subject matter are provided.

17 20. Exhibit Q is a letter from Emerson Brooks. No invention
18 development activities are listed. The letter describes an attached
19 bill for personnel placement service for hiring Mr. Jack Thornton.
20 A payroll register is also attached that shows that Mr. Thornton
21 began work in June, the same month as Kirk's application was
22 filed. No specific details of development activities of the claimed
23 subject matter are provided. The letter is dated 10 days
24 subsequent to Kirk's filing date.

1 21. Exhibit R is a proposal from Construction Specialties, Inc. for
2 construction work. Declaration ¶ 27 states that this was related
3 to the moving plans that were implemented between mid July and
4 mid August, 1992. No specific details of development activities
5 of the claimed subject matter are provided. The letter is dated 22
6 days subsequent to Kirk's filing date.

7 22. Exhibit S is a series of letters discussing participation at a trade
8 conference. No specific details of development activities of the
9 claimed subject matter are provided. The letters are dated
10 between 17 and 29 days subsequent to Kirk's filing date.

11 23. Exhibits T and U are copies of a non-disclosure agreement with
12 several high level system charts. Declaration ¶ 35 states that this
13 was a schematic. The schematic diagrams show high level
14 interconnections among several generic well known articles of
15 electronic equipment, but details of implementation to the level of
16 the claim limitations. Declaration ¶ 36 states that exhibit U was a
17 copy sent to the Appellant's patent attorney. No specific details
18 of development activities of the claimed subject matter are
19 provided. The letter is dated 59 days subsequent to Kirk's filing
20 date.

21 24. Exhibit V is handwritten note discussing the need for a
22 proposal. Declaration ¶ 37 states that this was indicative of
23 continuing development. The note makes reference to a prototype
24 with off the shelf components, but provides no indication of
25 whether such a prototype is prospective or not. No specific details

1 of development activities of the claimed subject matter are
2 provided. The letter is dated 67 days subsequent to Kirk's filing
3 date.

4 25. Exhibit W is a September 3, 1192 letter from attorneys to Raya
5 Systems acknowledging that work on the patent application is
6 authorized to begin. The letter indicates that a patentability search
7 that will be used to amend the application is deferred an additional
8 twenty days beyond the date of the letter. No specific details of
9 development activities of the claimed subject matter are provided.
10 The letter is dated 80 days subsequent to Kirk's filing date.

11 26. Exhibit X is a series of correspondence regarding an
12 administrative review by the Department of Health and Human
13 Services on a Phase II Small Business Innovation Research grant
14 application. The response by Raya Systems lists budgetary
15 matters but no actual details regarding activities on developing the
16 invention. No specific details of development activities of the
17 claimed subject matter are provided. The letters are dated 86 and
18 87 days subsequent to Kirk's filing date.

19 27. Exhibit Y is an October 2, 1992 draft of a patent application
20 from the attorneys. No specific details of development activities
21 of the claimed subject matter or of the drafting activities of the
22 patent application are provided. The draft is dated 109 days
23 subsequent to Kirk's filing date. The draft contains 28 pates of
24 specification and 5 pages for 10 drawings.

1 28. Exhibit Z is a letter to the attorneys with a handwritten drawing.

2 The letter states that the drawing ought to be in the application.

3 The drawing is a high level diagram of an information flow
4 between a patient and physician and portrays several high level
5 structures through which information passes. No specific details
6 of development activities of the claimed subject matter or of the
7 drafting activities of the patent application are provided. The
8 letter is dated 109 days subsequent to Kirk's filing date.

9 29. Exhibit AA is an October 31, 1992 invoice from the patent
10 attorneys. The invoice shows that 8.2 hours were spent on
11 October 1 and 2, 1992 (108 and 109 days subsequent to Kirk's
12 filing date) and 6.6 hours on October 27-29 (134 and 136 days
13 subsequent to Kirk's filing date). The only activity during the 25
14 days between those dates is a 4.9 hour meeting. No specific
15 details of development activities of the claimed subject matter or
16 of the drafting activities of the patent application are provided.

17 30. Exhibit AB is the instant application filed 155 days subsequent
18 to Kirk's filing date.

19 31. The Appellant provided evidence of conception of the claimed
20 subject matter prior to Kirk's filing date.

21 32. The Appellant provided a timeline of the inventor's activities
22 between Kirk's filing date and the filing date of the instant
23 application.

1 33. The Appellant did not provide a timeline of the activities
2 reducing the invention to actual practice between Kirk's filing
3 date and the filing date of the instant application.

4 34. One cannot discern what activities in actual reduction to
5 practice occurred and when they occurred from the evidence in the
6 record.

7 35. The Appellant did not provide a timeline of the activities
8 reducing the invention to constructive practice between Kirk's
9 filing date and the filing date of the instant application.

10 36. One cannot discern what activities in constructive reduction to
11 practice occurred and when they occurred from the evidence in the
12 record.

13 37. The second declaration is dated June 8, 2004. Attached to it are
14 exhibits labeled 1 through 9. These exhibits are copies from
15 among those attached to the first declaration *supra*.

16 *Facts Related To The Application Disclosure*

17 38. The instant application was filed January 26, 1999.

18 39. The Application claims priority by way of a continuation in part
19 to Application 07/977,323, filed November 17, 1992. This is the
20 only application in the chain of priority that antedates the applied
21 prior art.

22 40. The Appellant has presented no evidence that the disclosure in
23 the 07/977,323 application provides a 35 U.S.C. § 112 compliant

written description of the inventions as recited in the instant claims.

PRINCIPLES OF LAW

Obviousness

A claimed invention is unpatentable if the differences between it and the prior art are “such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007); *Graham v. John Deere Co.*, 383 U.S. 1, 13-14 (1966).

In *Graham*, the Court held that the obviousness analysis is bottomed on several basic factual inquiries: “[(1)] the scope and content of the prior art are to be determined; [(2)] differences between the prior art and the claims at issue are to be ascertained; and [(3)] the level of ordinary skill in the pertinent art resolved.” *Graham*, 383 U.S. at 17. *See also KSR*, 550 U.S. at 406. “The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *KSR*, 550 U.S. at 416.

ANALYSIS

The sole issue before us is whether Kirk is a prior art reference. If it is, the Appellant has not argued that the combination of the reference would not render the invention obvious.

The Appellant filed a declaration under 37 C.F.R. § 1.131 as evidence of conception prior to Kirk's filing date and diligence in constructive reduction to practice between the filing dates of Kirk and the instant application. We agree that the declaration includes evidence of conception prior to Kirk's

1 filing date. Thus, the issue reduces to diligence in reducing to practice
2 during the 155 days between Kirk's filing and the effective filing date of the
3 instant application.

4 The instant application was filed January 26, 199 (FF 38), but has
5 claimed priority by way of continuations to April 26, 1994 and a
6 continuation in part to November 17, 1992 (FF 39). The Appellant has
7 provided no analysis of the differences between the 1992 disclosure and the
8 present application disclosure, or a mapping between the 1992 disclosure
9 and the present claims, to show that the present claims are fully supported by
10 the 1992 disclosure. FF 40. Thus, we first find that the Appellant has not
11 shown that the instant claims are entitled to the benefit of November 1992
12 application filing date.

13 Next, there remains the issue of whether the Appellant invented the
14 claimed subject matter prior to Kirk's filing date. The first issue as regards
15 invention is whether conception occurred prior to Kirk's filing date. The
16 Appellant filed two declarations. FF 02 and FF 37. The information in the
17 earlier declaration is essentially a subset of the latter. Both declarations refer
18 to a one page letter as evidence of conception. FF 03. This letter indicates
19 acceptance of an order for Camit 2.5 indicating a desire to begin
20 development on April 26. There are no details of any method or machine
21 other than the names of some devices. There are no details showing the
22 specific components recited in the claim. FF 04. Thus, we have no
23 objective evidence that the specific inventions recited in the claims were
24 conceived prior to the applied art.

1 The Appellant argues that he exercised diligence in reduction to practice.
2 However, no specific details of development activities of the claimed subject
3 matter are provided in the declarations and their attachments. It would
4 appear the Appellant is arguing that the entire period from the filing date of
5 Kirk to the date the patent attorney began constructive reduction to practice
6 was excused activity.

7 We agree that an inventor does not have to work on reduction to practice
8 every day, if reasonable excuse is provided. "A review of case law on
9 excuses for inactivity in reduction to practice reveals a common thread that
10 courts may consider the reasonable everyday problems and limitations
11 encountered by an inventor." *Griffith v. Kanamaru*, 816 F.2d 624, 626 (Fed.
12 Cir. 1987).

13 But this is not a general waiver of the requirement for showing that work
14 was performed in the reduction to practice, particularly when the every day
15 work was done in pursuing commercial development.

16 [E]xcuses [] in the nature of commercial development [are] not
17 accepted as an excuse for delay, [contrasted with] the
18 "hardship" cases. [] Delays in reduction to practice caused by
19 an inventor's efforts to refine an invention to the most
20 marketable and profitable form have not been accepted as
21 sufficient excuses for inactivity.

22 *Griffith*, 816 F.2d at 627. Many of the activities detailed in the declaration
23 and exhibits bear little direct relation to actually reducing the invention to
24 practice. Many of the activities are directed to establishing intellectual
25 property protection measures, obtaining speaking engagements, and
26 planning for staffing needs. Others, such as proposing development
27 timetables, are tangentially related, but show no actual reduction itself.

1 The activities that may be considered in a showing of diligence
2 can take a diversity of forms. Precedent illustrates the
3 continuum between, on the one hand, ongoing laboratory
4 experimentation, and on the other hand, pure money-raising
5 activity that is entirely unrelated to practice of the process. []
6 [E]fforts by the inventor to secure financial backing, by
7 showing the invention to prospective manufacturers over a four
8 year period, did not establish diligence toward reduction to
9 practice.

10 *Scott v Koyama*, 281 F.3d 1243, 1248 (Fed. Cir. 2002). No specific details
11 of development activities of the claimed subject matter are provided.
12 Simply put, we find no evidence concerning activities supporting the actual
13 reduction of the invention itself to practice in the record before us. This
14 takes us to the constructive reduction that is apparently relied upon.

15 Exhibit W is a September 3, 1992 letter from attorneys to Raya Systems
16 acknowledging that work on the patent application is authorized to begin.
17 The letter indicates that a patentability search that will be used to amend the
18 application is deferred an additional twenty days beyond the date of the
19 letter. No specific details of development activities of the claimed subject
20 matter are provided. This letter, evidencing the beginning of constructive
21 reduction, is dated 80 days subsequent to Kirk's filing date. FF 25.

22 Exhibit Y is an October 2, 1992 draft of a patent application from the
23 attorneys. No specific details of development activities of the claimed
24 subject matter or of the drafting activities of the patent application are
25 provided. This draft of a constructive reduction is dated 109 days
26 subsequent to Kirk's filing date and 46 days prior to the filing date of the
27 earliest application in the priority chain.

1 The only evidence of work that the patent attorney provided in the
2 period between commencement and this draft is an October 31, 1992
3 invoice. No specific details of development activities of the claimed subject
4 matter or of the drafting activities of the patent application. FF 29. This
5 shows just under 7 hours of work performed on October 1. The period from
6 September 3 to 30 is unaccounted for. Further, no activity is shown between
7 October 7 and October 27. To establish diligence for constructive reduction
8 to practice, the attorney's diligence must be shown.

9 “[R]easonable diligence can be shown if it is established that the
10 attorney worked reasonably hard on the particular application in question
11 during the continuous critical period.” *Bey v. Kollonitsch* 806 F.2d 1024,
12 1027 (Fed. Cir. 1986). “[The inventor’s] records did not show the exact
13 days when activity specific to this application occurred. Thus, we cannot
14 say that the board clearly erred in finding that "the documented activities
15 with regard to [the present application] are insufficient by themselves to
16 prove diligence." *Bey*, 806 F.2d at 1028.

17 It may have been that the attorney had a backlog to take care of between
18 September 3 and 30.

19 [I]t may not be possible for a patent attorney to begin working
20 on an application at the moment the inventor makes the
21 disclosure, because the attorney may already have a backlog of
22 other cases demanding his attention. Thus, the courts have
23 recognized that reasonable diligence is all that is required of the
24 attorney. [] Generally, the patent attorney must show that
25 unrelated cases are taken up in chronological order, thus, the
26 attorney has the burden of keeping good records of the dates
27 when cases are docketed as well as the dates when specific
28 work is done on the applications.

1 *Bey*, 806 F.2d at 1028. But there is no evidence of such a backlog or that if
2 there was a backlog that it was taken up in chronological order. There is
3 also no evidence showing that the period subsequent to the last documented
4 attorney activity on October 29 up to the date of filing was excused activity.
5 We are left with a large number of days in which no documented attorney
6 activity occurred and no evidence that those days were excusable.

7 Taking all of this evidence together, we have a claim to priority of a
8 continuation-in-part for which there is no showing that the earlier
9 application provides an adequate written description. The earlier application
10 was further filed subsequent to the applied art. We have no evidence that the
11 specific details of any of the claims were conceived prior to the applied art,
12 no specific details of development activities of the claimed subject matter or
13 of the drafting activities of the patent application, and no evidence that the
14 attorney was diligent in constructive reduction.

15 We cannot say that the documented activities with regard to the present
16 application are sufficient to prove diligence or conception. Even if they
17 were sufficient, there is no evidence that the 1992 application provided an
18 adequate written description for the instant claims. We conclude that all of
19 the references, and Kirk in particular, constitute prior art against the instant
20 claims. The Appellant presents no arguments that the claims are not obvious
21 over the art as applied.

22 CONCLUSIONS OF LAW

23 The Examiner did not err in rejecting claims 34-41, 45-50, 52, 54-59,
24 61-63, 65, 66, 69-75, 77-84, 88-93, 95, 97-102, 104-106, 108, 109, and 112-
25 118 under 35 U.S.C. § 103(a) as unpatentable over Fu, Lee, and Kirk.

1 The Examiner did not err in rejecting claims 42, 44, 85, and 87 under 35
2 U.S.C. § 103(a) as unpatentable over Fu, Lee, Kirk, and Beckers.

3 The Examiner did not err in rejecting claims 51, 53, 60, 64, 67 94, 96,
4 103, 107, 110, and 111 under 35 U.S.C. § 103(a) as unpatentable over Fu,
5 Lee, Kirk, and Fujimoto.

6 The Examiner did not err in rejecting claims 43 and 86 under 35 U.S.C.
7 § 103(a) as unpatentable over Fu, Lee, Kirk, and Official Notice.

8 The Examiner did not err in rejecting claims 76 and 119-138 under 35
9 U.S.C. § 103(a) as unpatentable over Fu, Lee, Kirk, and Official Notice.

10 DECISION

11 To summarize, our decision is as follows.

- 12 • The rejection of claims 34-41, 45-50, 52, 54-59, 61-63, 65, 66, 69-75,
13 77-84, 88-93, 95, 97-102, 104-106, 108, 109, and 112-118 under 35
14 U.S.C. § 103(a) as unpatentable over Fu, Lee, and Kirk is sustained.
- 15 • The rejection of claims 42, 44, 85, and 87 under 35 U.S.C. § 103(a) as
16 unpatentable over Fu, Lee, Kirk, and Beckers is sustained.
- 17 • The rejection of claims 51, 53, 60, 64, 67 94, 96, 103, 107, 110, and
18 111 under 35 U.S.C. § 103(a) as unpatentable over Fu, Lee, Kirk, and
19 Fujimoto is sustained.
- 20 • The rejection of claims 43 and 86 under 35 U.S.C. § 103(a) as
21 unpatentable over Fu, Lee, Kirk, and Official Notice is sustained.
- 22 • The rejection of claims 76 and 119-138 under 35 U.S.C. § 103(a) as
23 unpatentable over Fu, Lee, Kirk, and Official Notice is sustained.

